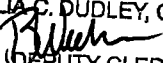


MAY 12 2017

JULIA C. DUDLEY, CLERK  
BY:   
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

UNITED STATES OF AMERICA )

v. )

HECTOR BATISTA, )

Petitioner. )

Case No. 5:09CR00037

By: Michael F. Urbanski  
United States District Judge

ORDER

For the reasons set forth in the accompanying memorandum opinion, the court

**ORDERS** as follows:

- (1) Petitioner Hector Batista's habeas corpus petition, ECF No. 92, is **GRANTED**, and the United States' motion to dismiss, ECF No. 101, is **DENIED**.
- (2) Petitioner's sentence on Counts One and Five imposed pursuant to the Armed Career Criminal Act is **VACATED**.
- (3) Petitioner will be resentenced on a date and place to be determined by the Clerk. Counsel are **DIRECTED** to contact Jody Turner, Courtroom Deputy in Harrisonburg, to schedule a sentencing hearing.
- (4) Should Petitioner consent in writing, the resentencing may be accommodated by videoconference. If Petitioner requests resentencing in person, the United States Marshal is **DIRECTED** to facilitate Petitioner's transportation and appearance at his resentencing.
- (5) An expedited Amended Presentence Investigation Report **SHALL** be prepared in advance of sentencing reflecting this Court's ruling and without application of the Armed Career Criminal Act. Any objections to the Amended PSR shall be filed no later than seven days prior to resentencing.
- (6) Counsel are **DIRECTED** to file sentencing memoranda seven (7) days prior to resentencing.

The Clerk is **DIRECTED** to file this Order and provide copies to counsel and the United States Probation Office.

It is **SO ORDERED**.

Entered: 05-11-2017

*/s/ Michael F. Urbanski*

Michael F. Urbanski  
United States District Judge